

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 619 of 1997

in

SPECIAL CIVIL APPLICATION No 3741 of 1997

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

C. K. THAKORE & SONS

Versus

STATE OF GUJARAT

Appearance:

MR MUKUND M DESAI for Appellant
MS Manisha Lavkumar, Asstt.GOVERNMENT PLEADER for
Respondents

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

ORAL JUDGEMENT

Admitted. Ms Manisha Lavkumar, learned AGP appears for the respondents and waives service of notice of admission. In the facts and circumstances, the matter is taken up for hearing today.

This appeal is filed against the order passed by the learned Single Judge summarily dismissing SCA No. 3741 of 1997 on May 9, 1997. Said order reads as under:

"Mr. Desai, learned advocate for the petitioner is not answering to the queries of this court and the answer given by him is in the fashion of misleading the court. Hence, petition is rejected."

In our opinion, neither the matter has been dismissed for default nor on merits. Since the learned counsel for the petitioner was present, the petition could not be dismissed for default. The learned Single Judge has not observed anything on merits. In our opinion, therefore, the above order cannot stand.

For the above reasons, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside. Office will place the matter before the learned Single Judge taking up such matters. We may state that we are not expressing any opinion on merits of the matter and as and when the matter is taken up for hearing, the Court will decide the same on its own merits. No costs.

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parekh